

## **REMARKS / ARGUMENTS**

The present patent application comprises twenty-six (26) claims, numbered 1 to 26 (as renumbered – see section A below). Claims 1 to 3 and 5 to 17 are currently pending and claims 4 and 18 to 26 have been previously withdrawn. No amendment has been made to the present application by the present response.

### **A. Remarks regarding Claim Numbering**

On page 2 of the Office Action, the Examiner indicates that misnumbered claims 17 to 20 have been renumbered 16 to 19. Misnumbered claims 21 to 27, which have been previously withdrawn but are still pending, are thus renumbered 20 to 26.

### **B. Remarks regarding Election/Restriction**

On page 2 of the Office Action, the Examiner contends that claims 13 to 17 read on Figures 10 to 13, not on Figure 2. It is respectfully submitted that the Examiner has erred in making this contention since claims 13 to 17 do read on Figure 2 as mentioned on page 13, lines 3 to 7 of the specification as originally filed. Accordingly, the Examiner is respectfully requested to reconsider withdrawal of claims 13 to 17, which should not be withdrawn and should be examined.

### **C. Rejection of Claims 1 and 3 under 35 U.S.C. 102**

On page 3 of the Office Action, the Examiner rejects claims 1 and 3 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 1,491,601 (Fuller). The Applicant respectfully requests reconsideration of this rejection in view of the following remarks.

According to MPEP 706.02, in order for the Examiner to reject independent claim 1 as being anticipated by Fuller, this reference must teach, either explicitly or implicitly, all features specified in claim 1. Any feature not directly taught must be inherently present.<sup>1</sup>

The Applicant directs the Examiner's attention to the following highlighted features of independent claim 1 that are neither disclosed nor suggested by Fuller:

1. A tumbler for **artificially ageing the appearance of surfaces, edges, and corners of concrete blocks**, said tumbler comprising:

(a) a container having a longitudinal axis and comprising a plurality of compartments, each compartment being separated from an adjacent compartment by a partition transverse to the longitudinal axis of said container; and

(b) a door coupled to said container, said door being movable from a first position to a second position, wherein, in said first position, said door allows **the concrete blocks to be loaded into or unloaded from at least one of said plurality of compartments**, and in said second position, said door **maintains the concrete blocks within said at least one of said plurality of compartments such that rotation of the container about the longitudinal axis causes the concrete blocks to tumble and collide with each other.**

Fuller in no way discloses nor suggests a tumbler for artificially ageing the appearance of surfaces, edges and corners of concrete blocks, where the tumbler comprises a container comprising a plurality of compartments in which the concrete blocks can be loaded and maintained such that rotation of the container causes the concrete blocks to tumble and collide with each other. As described in the

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<sup>1</sup> See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, where the Federal Circuit indicates: “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” (p. 1053).

specification, this tumbling and colliding results in damage of the surfaces, edges and corners of the concrete blocks, thereby imparting to the concrete blocks an aged or worn appearance.

Fuller describes an apparatus for polishing metallic articles, in particular hinged metallic folding frames used in bags, purses and like receptacles (p. 1, lines 14 to 19). Fuller's apparatus comprises a casing having compartments adapted to receive metallic articles which are polished by *abrading elements and cleansing fluid* added into the compartments and moving therein as the casing rotates (p. 2, lines 120 to 129). The whole purpose of Fuller's apparatus, i.e., polishing of metallic articles, is thus ***diametrically opposed to*** artificially ageing the appearance of surfaces, edges and corners of concrete blocks. In that sense, Fuller's apparatus is obviously not adapted be loaded with concrete blocks and to cause the concrete blocks to tumble and collide with each other.

There is absolutely no mention or remote suggestion in Fuller of the compartments being dimensioned to enable concrete blocks to be loaded therein and to tumble and collide with each other as the casing rotates, or of the casing being designed to withstand tumbling of concrete blocks. Not only is Fuller totally unconcerned with, and has a purpose completely opposite to, artificially ageing the appearance of surfaces, edges and corners of concrete blocks, but Fuller's apparatus is not adapted be loaded with concrete blocks and to cause the concrete blocks to tumble and collide with each other.

It is therefore submitted that Fuller neither discloses nor suggests the above highlighted features specified in claim 1. Withdrawal of the Examiner's rejection of claim 1 pursuant to 35 U.S.C. 102(b) and allowance of this claim are earnestly solicited.

Because claims 2, 3 and 5 to 17 depend directly or indirectly from claim 1 and incorporate by reference all of the features recited in claim 1, these claims are also patentable.

On pages 3 and 4 of the Office Action, the Examiner rejects claims 2 and 5 under 35 U.S.C. 103(a) as being unpatentable over Fuller in view of U.S. Patent 3,148,485 (Garvey). The Examiner also rejects claims 6 to 12 under 35 U.S.C. 103(a) as being unpatentable over Fuller in view Garvey and further in view of U.S. Patent 3,498,089 (Miller).

The Applicant offers the following comments with respect to Garvey and Miller.

Garvey describes an apparatus for finishing (polishing) thin sheet metal parts such as those having a thickness of 1/8 inch or less that are used for chassis or panels (col. 1, lines 11 to 13 and 29 to 31). Garvey's apparatus comprises a drum having compartments adapted to receive thin sheet metal parts which are finished (polished) by *abrasive media* added into the compartments and moving therein as the drum rotates (col. 2, line 60 to col. 3, line 14). The whole purpose of Garvey's apparatus, i.e., finishing (polishing) of thin sheet metal parts, is thus *diametrically opposed to* artificially ageing the appearance of surfaces, edges and corners of concrete blocks. In that sense, not only is Garvey totally unconcerned with, and has a purpose completely opposite to, artificially ageing the appearance of surfaces, edges and corners of concrete blocks, but Garvey's apparatus is not adapted be loaded with concrete blocks and to cause the concrete blocks to tumble and collide with each other.

Miller describes a laundry machine (col. 1, lines 12 to 48). Not only is this laundry machine totally irrelevant to a tumbler for artificially ageing the appearance

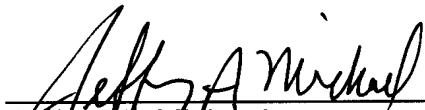
of surfaces, edges and corners of concrete blocks, this laundry machine does not even have a container comprising a plurality of compartments, let alone a plurality of compartments in which concrete blocks can be loaded and maintained such that rotation of the container causes the concrete blocks to tumble and collide with each other.

### CONCLUSION

It is respectfully submitted that claims 1 to 3 and 5 to 17 are in condition for allowance. Favorable reconsideration is requested. Early allowance of the present application is earnestly solicited.

The Examiner is invited to call the Applicant's undersigned patent attorney if any further amendments will expedite prosecution of the present patent application or if the Examiner has any suggestions or questions concerning this application or the present response. If the application is not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP 707.07(j) or in making constructive suggestions pursuant to MPEP 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,



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